

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02

PLR-116234-11

Date:

May 13, 2011

Legend:

Fund =

Trust =

Subsidiary =

Type A Company =

State =

Country =

Dear :

This responds to your request dated April 13, 2011, submitted by your authorized representative on behalf of Fund. Fund requests that the Internal Revenue Service rule that income earned by Fund from its investment in its wholly-owned subsidiary, a controlled foreign corporation ("CFC"), will constitute qualifying income to Fund under section 851(b)(2) of the Code.

Facts:

Fund is a series of Trust, an open-end management investment company organized under the laws of State and registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the "1940

Act”). Fund has elected or will elect to be taxed as a regulated investment company (“RIC”) under Subchapter M of the Code. Fund uses an accrual method of accounting and a fiscal year ending March 31.

Fund has formed Subsidiary, a wholly-owned subsidiary incorporated as a Type A Company under the laws of Country. Under the laws of Country, a Type A Company provides limited liability for all holders of shares. A shareholder’s liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary will file an election on Form 8832, Entity Classification Election, to ensure that Subsidiary will be treated as a corporation for federal income tax purposes.

Fund represents that, although Subsidiary will not be registered as an investment company under the 1940 Act, Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to investments to which this authority would apply if Subsidiary were registered under the 1940 Act.

Fund will invest a portion of its assets in Subsidiary, subject to the limitations set forth in § 851(b)(3) of the Code. Subsidiary invests in commodity-related investments, which may include commodity-linked derivatives, commodity-linked debt, and trusts or other investment vehicles that invest primarily or exclusively in commodities. Subsidiary may also invest in short-term, high quality securities.

Law and Analysis:

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC’s] business of investing in such stock, securities, or currencies

In addition, the flush language of § 851(b) of the Code provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under §§ 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under §§ 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a CFC as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in § 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Fund represents that Subsidiary will be wholly owned by Fund. Fund is a United States person. Fund therefore represents that Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of such corporation and who owns stock in such corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Under section 954(c)(1), foreign personal holding company income includes (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forwards, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subsidiary's investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Fund therefore will include in its income the subpart F income of Subsidiary in accordance with section 951.

Conclusion:

Based on the facts as represented, we rule that subpart F income of Subsidiary attributable to Fund is income derived with respect to Fund's business of investing in the stock of Subsidiary and thus constitutes qualifying income under § 851(b)(2) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Fund qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Silber
David B. Silber
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)